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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 KIMBERLY S. SETHAVANISH,
11 Plaintiff,
12 v.
13 BALANCE BAR COMPANY,
14 Defendant.

No. C 11-4547 PJH

**ORDER GRANTING MOTION
TO DISMISS AND VACATING
HEARING DATE**

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16 Before the court is the motion of defendant Balance Bar Company ("Balance Bar") to
17 dismiss the sixth cause of action alleged in the first amended complaint ("FAC"), to the
18 extent that it seeks damages pursuant to California Civil Code § 1780 for any violation of
19 California Civil Code § 1770(a)(5) except for the identification of products as "all natural"
20 which contain cocoa alkalized with potassium carbonate. Having read the parties' papers
21 and carefully considered their arguments, and good cause appearing, the court finds that
22 the motion must be GRANTED.

23 In her opposition to the motion, plaintiff states that the FAC added a claim for
24 damages under the Consumers Legal Remedies Act ("CLRA") for a single ingredient
25 (potassium carbonate) (citing FAC ¶¶ 77-78), and "expressly disclaimed any assertion of a
26 claim for damages based upon [d]efendant's use of the other eight artificial and synthetic
27 ingredients in its Energy Bars (citing FAC ¶¶ 77, 79). Based on this representation, and
28 also based on plaintiff's failure to seek leave to amend the FAC to add a claim for damages

1 with respect to the violations alleged in the "supplemental" CLRA notice, the court grants
2 the motion in order to clarify that plaintiff does not seek damages for any CLRA violation
3 other than the identification of products as "all natural" which contain cocoa alkalized with
4 potassium carbonate.

5 The date for the hearing on this motion, previously set for Wednesday, February 1,
6 2012, is VACATED.

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8 **IT IS SO ORDERED.**

9 Dated: January 27, 2012



10 PHYLLIS J. HAMILTON
11 United States District Judge
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